

REMARKS

Claims 1-56 are now pending. Claims 1-46 have been amended and new claims 47-56 have been added. The pending claims correspond to the claims originally filed in the parent case (10/463,052). No new matter has been added.

The foregoing amendments are made in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicant believes that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

Formal Matters

The Examiner objected to claims 15-22 stating that the claims were written in improper dependent form for failing to further limit the subject matter of a previous claim. Applicants have amended these claims; thereby, mooting the Examiner's objection. Applicants respectfully request that this objection be withdrawn.

Rejection of claims 16, 22, and 23-27 under 35 U.S.C. §112 ¶2

The Examiner rejected claims 16, 22, and 23-27 under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. These claims have been amended for other reasons and do not now contain the objectionable language cited by Examiner. Consequently, Applicants respectfully request that the Examiner withdraw this rejection.

Rejection of claim 1 under 35 U.S.C. §102(b)

The Examiner rejected claim 1 under §102(b) as being anticipated by U.S. Pat. No. 6,003, 950 to Larsson (“Larsson”). Larsson fails to teach a “first layer having a heater integrated therein.” Therefore, Larsson does not teach every feature of amended claim 1. Applicants respectfully request that the Examiner withdraw this rejection.

Rejection of claims 2-8, 24, and 25 under 35 U.S.C. §103

The Examiner also rejected claims 2-8, 24, and 25 under 35 U.S.C. §103 as being unpatentable over Larsson in view of U.S. Pat. No. 6,541,737 to Eksin et al. (“Eksin”). This rejection is traversed.

As a preliminary matter, Applicants are confused as to Examiner’s use of references to make this rejection. Examiner cites only Larsson and Eksin to reject these claims and then discusses “Larsson in view of Weiss.” Clarification is respectfully requested.

Applicants assert that neither Larsson, Eksin, nor Weiss, in combination or otherwise, teach all of the elements of the present invention as amended. Applicants also assert that Examiner has failed to provide sufficient evidence of motivation to combine the references.

As acknowledged by the Examiner, Larsson does not teach a heated layer nor does it teach a multi-layer laminate. Likewise, Eksin in combination with Larsson fails to teach every feature of claim 1. Eksin teaches a heated seat; however, instead of the heater

located in the insert as a layer, Eksin situates the heating elements in cavities of the seat cushion beneath an air permeable surface. See Fig. 1 and Col. 3, lines 27-29.

Eksin does not teach a first layer with a heater integrated therein. Contrary to the Examiner's assertion, item 37 is not a heated layer in Eksin. In fact, item 37 refers to a thermally conductive layer with no discussion of this layer as being a heat source. See Col. 3, line 64 and Col. 4, line 3. Thus, Eksin does not in fact teach a heated layer.

Since Larsson does not teach the use of a heater layer, it cannot be the source of the motivation to combine Larsson and Eskin. Moreover, the fact that Eksin discloses a heated seat would not motivate the skilled artisan to combine a heater-integrated layer and a spacer material. In particular, nothing in Eskin would motivate a skilled artisan to move the heating elements from the seat cushion to the insert, as presently claimed.

Likewise, Weiss fails to provide motivation to combine the references. The particular problem is that Weiss and Eskin show two different heaters so there needs to be motivation to substitute the heater in Eksin with the heater of Weiss in the seat of Larsson. Weiss offers no such motivation; therefore, Examiner fails to establish a *prima facie* case of obviousness. Respectfully, Applicants request that the Examiner withdraw this rejection.

Rejection of claims 9 and 10 under 35 U.S.C. §103

The Examiner rejected claims 9 and 10 under 35 U.S.C. §103 as being unpatentable over Larsson in view of Eksin and Weiss. The rejection of claims 9 and 10 are traversed. None of these references cited by Examiner teaches "sub-passageways" or, as discussed above, a "first layer having a heater integrated therein."

Additionally, as discussed above, there is a lack of any motivation to combine these references. Respectfully, Applicants request that the Examiner withdraw this rejection to claims 9 and 10.

Rejection of claims 11-23, 26 and 27 under 35 U.S.C. §103

The Examiner rejected claims 11-23, 26 and 27 under 35 U.S.C. §103 as being unpatentable over Larsson in view of Eksin, Weiss, and U.S. Pat. No. 5,934,748 to Faust et al. ("Faust"). This rejection is traversed.

Applicants assert that Examiner has failed to cite any motivation for combining these four references. As discussed above, there would have to be some motivation to substitute the heaters of Eskin or Faust with the heater of Weiss. The Examiner has failed to provide any such evidence. Respectfully, Applicants request that the Examiner withdraw this rejection.

Rejection of claims 28-33 under 35 U.S.C. §103

The Examiner rejected claims 28-33 under 35 U.S.C. §103 as being unpatentable over Larsson in view of Faust. Applicants assert that this combination does not teach every feature of the amended claims. Neither Faust nor Larsson teach a heater integrated with a first layer.

Moreover, Applicants assert that Examiner has failed to cite any evidence that the skilled artisan would be motivated to combine these references. Respectfully, Applicants request that the Examiner withdraw this rejection.

Rejection of claims 34-36 and 41-46 under 35 U.S.C. §103

The Examiner rejected claims 34-36 and 41-46 under 35 U.S.C. §103 as being unpatentable over Larsson in view of Faust and Weiss. This rejection is traversed.

For the reasons stated above, Applicants assert that Examiner has failed to make her *prima facie* case of obviousness because she failed to cite any motivation for combining references. Respectfully, Applicants request that the Examiner withdraw this rejection.

Rejection of claims 37-40 under 35 U.S.C. §103

The Examiner rejected claims 37-40 under 35 U.S.C. §103 as being unpatentable over Larsson in view of Faust, Eksin, and Weiss. This rejection is traversed.

As mentioned above, Examiner has failed to show that the skilled artisan would be motivated to combine these references. As such, Applicants respectfully request that the Examiner withdraw this rejection.

CONCLUSIONS

In view of Applicant's amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicant submits that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 593-9900.

If for some reason Applicant has not requested a sufficient extension and/or has not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

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